IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 10039 of 2005(T)

PETITIONER:

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1. K.G.RAJAMOHAN NAIR,
   ATTENDER, KANGAZHA SERVICE CO-OPERATIVE,
   BANK LTD., NO.1145, KANGAZHA.

2. P.D.ABDUL KARIM,
   ATTENDER, KANGAZHA SERVICE CO-OPERATIVE BANK LTD.,
   NO.1145, KANGAZHA.

BY ADV. SRI.T.M.ABDUL LATHEEF
SMT.P.VIJAYALAKSHMI.

RESPONDENTS:

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1. STATE OF KERALA, REP. BY THE SECRETARY
   TO GOVERNMENT, CO-OPERATIVE DEPARTMENT,
   THIRUVANANTHAPURAM.

2. JOINT REGISTRAR OF CO-OPERATIVE
   SOCIETIES(GENERAL), KOTTAYAM.

3. KANGAZHA SERVICE CO-OPERATIVE
   BANK LTD., NO.1145, KANGAZHA P.O.,
   PATHANAD, REP. BY ITS SECRETARY.

BY ADV. SRI.P.N.MOHANAN, SC
ADV.SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 10039/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF THE ORDER NO. CRP (2) 200/2000 DATED 22/03/2000 OF THE 1ST RESPONDENT.

EXT.P2 COPY OF THE ORDER NO.CRP (2) 2645/98 DATED 14/7/1998 OF THE FIRST RESPONDENT.

EXT.P3 COPY OF THE STATEMENT OF FIXATION OF PAY DATED NIL.

EXT.P4 COPY OF THE PROCEEDINGS NO. 22 DATED 19/03/2003 OF THE 3RD RESPONDENT Bank.

EXT.P5 COPY OF THE PROCEEDINGS NO.20 DATED 23/12/2003 OF THE 3RD RESPONDENT Bank.

EXT.P6 COPY OF THE ORDER NO.1061/02 DATED 27/08/2003 OF THE 2ND RESPONDENT.

EXT.P7 COPY OF THE PETITION DATED 17/11/2003 SUBMITTED BY THE FIRST PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P8 COPY OF THE PETITION DATED NIL SUBMITTED BY THE 2ND RESPONDENT BEFORE THE FIRST RESPONDENT.

EXT.P9 COPY OF THE RESOLUTION NO. 520 DATED 13/01/2004 OF THE 3RD RESPONDENT.

EXT.P10 COPY OF THE ORDER NO.C.R.P. (2) /4154/04 DATED 19/01/2005 OF THE 2ND RESPONDENT.

EXT.P11 COPY OF THE CIRCULAR NO. 16/2001 (EM2/47803/2000) OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 10039 of 2005 T

Dated, this the 16th day of March, 2007

J U D G M E N T

Heard the learned counsel for the petitioners, the learned counsel appearing for the 3rd respondent and the learned Government Pleader.

2. Petitioners are challenging Ext.P10 order whereunder the 2nd respondent has directed 3rd respondent to recover excess salary drawn by petitioners from 01/04/1999 to 01/04/2002. The petitioners are last grade employees in the 3rd respondent Bank, which was a Special Grade Class-I Society until it was down graded as Class I Society from 01/04/1999 onwards. The Joint Registrar noticed that even after down grading the Bank to a Class- I Society, payment applicable to the Special Grade Society was made to the employees. This was noticed while auditing and under orders of Joint Registrar, the excess salary paid to several staff have been recovered by the Society and when recovery was sought from the petitioners, they approached this Court by challenging the order of the Joint Registrar to

recover the excess salary. The petitioners' case is that even after down grading of the Society there is protection to retain higher-grade salary under Government Orders, which is stated to be Circular No. GOP 47/2000 dated 22/03/2000. However, according to the learned counsel for the Society, this Circular does not apply to higher wages paid and according to him Circular No. 16/2001 is applicable. I feel this matter has to be sorted out first at the Government level, more so when a statutory appeal is provided against impugned order to the Government. Since excess salary is recovered from every other staff without contest, I do not know whether the contest of the petitioners is tenable or not. In any case, it is for the Government to consider petitioners claim after hearing Society also. This writ petition is accordingly disposed of with a direction to the 1st respondent to entertain the appeal or revision, if any, filed by the petitioners against Ext.P10 order along with a copy of this judgment within a period of one month from now and if so, to hear the Bank and take a decision within one month thereafter. All recovery proceedings will remain stayed for three

months from now and thereafter recovery will be based on orders of the Government. In between if any of the petitioners happened to be retire or resign from service, retirement benefit will be paid only after orders of the Government in regard to recovery.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

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